

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KENNETH W. MICHAEL,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

CASE NO. C11-5756 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 24), and Plaintiff Kenneth W. Michael’s (“Michael”) objections to the R&R (Dkt. 28).

On August 28, 2012, Judge Strombom issued the R&R recommending that the Court affirm the Administrative Law Judge’s (“ALJ”) decision to deny Michael benefits. Dkt. 24. On September 25, 2012, Michael filed objections. Dkt. 28. On October 9, 2012, Defendant replied. Dkt. 29.

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the  
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 **A. Dr. Lewis Opinion**

4 Judge Strombom found that, although the ALJ did commit some errors in rejecting  
5 the opinion of the treating physician Dr. Lewis, the ALJ provided valid reasons for  
6 rejecting the opinion and did not err overall. Dkt. 24 at 4–8. Michael’s objections are  
7 based on emphasizing the errors and arguing that the ALJ failed to provide any specific  
8 or legitimate reason for rejecting Dr. Lewis’s opinion. Dkt. 28 at 2–5. The Court agrees  
9 with Judge Strombom that the ALJ based his rejection on some legitimate reasons  
10 supported by the record. For example, the ALJ wrote that “the marked limitations are  
11 completely inconsistent with the overall objective evidence of record and so exaggerated  
12 as to be worthy of no weight.” Administrative Record at 22–23. Therefore, the Court  
13 adopts the R&R on this issue.

14 **B. Dr. McCroskey’s Opinion**

15 Judge Strombom found that, although the ALJ erred in rejecting Dr. McCroskey’s  
16 opinion based on the credibility of Michael’s self reports, the ALJ did not err overall  
17 because the ALJ provided other legitimate reasons for rejecting the opinion. Dkt. 24 at  
18 8–10. Michael objects, focusing on the standard for rejecting self reports. Dkt 28 at 5–7.  
19 Again, the Court agrees with Judge Strombom because the ALJ’s error as to self reports  
20 is not dispositive and the ALJ did not err overall. Therefore, the Court adopts the R&R  
21 on this issue.  
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1 **C. Steps Two and Three**

2 Michael originally argued that the ALJ erred at steps two and three of the process  
3 because he failed to consider Drs. Lewis and McCroskey's diagnosed limitations. Judge  
4 Strombom found that the ALJ did not err at either step because these doctors' opinions  
5 were entitled to no weight, as were the diagnosed limitations. Dkt. 24 at 11–12.  
6 Moreover, Judge Strombom found that Michael had failed to cite any evidence in the  
7 record that was not properly rejected to support his alleged limitations. *Id.* The Court  
8 agrees that the ALJ need not assess limitations that only appear in rejected medical  
9 opinions and that it is Michael's burden to submit evidence in support of his alleged  
10 limitations. Therefore, the Court adopts the R&R on these issues.

11 **D. Step Five**

12 Judge Strombom found that the ALJ did not err in asking a vocational expert about  
13 Michael's ability to work based on the limitations supported by evidence in the record  
14 that was not properly rejected. Dkt. 24 at 14–15. Michael objects and argues that the  
15 hypothetical should have included the limitations diagnosed by Drs. Lewis and  
16 McCroskey. Dkt. 28 at 9. The Court disagrees with Michael because a hypothetical need  
17 not include limitations presented in rejected medical opinions. Therefore, the Court  
18 adopts the R&R on this issue.

19 The Court having considered the R&R, Michael's objections, and the remaining  
20 record, does hereby find and order as follows:

- 21 (1) The R&R is **ADOPTED**;
- 22 (2) The ALJ's decision is **AFFIRMED**; and

1 (3) This action is **DISMISSED**.

2 Dated this 13th day of November, 2012.

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5 BENJAMIN H. SETTLE  
6 United States District Judge  
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